

## § 1.355-0

received in certain exchanges for non-qualified preferred stock or preferred stock. See §1.356-7(c) for the treatment of preferred stock received in certain exchanges for common or preferred stock described in section 351(g)(2)(C)(i)(II).

[T.D. 6500, 25 FR 11607, Nov. 26, 1960, as amended by T.D. 7616, 44 FR 26869, May 8, 1979; T.D. 8752, 63 FR 410, Jan. 6, 1998; T.D. 8882, 65 FR 31078, May 16, 2000; T.D. 8904, 65 FR 58651, Oct. 2, 2000]

### § 1.355-0 Outline of sections.

In order to facilitate the use of §§1.355-1 through 1.355-7, this section lists the major paragraphs in those sections as follows:

#### § 1.355-1 DISTRIBUTION OF STOCK AND SECURITIES OF A CONTROLLED CORPORATION.

- (a) Effective date of certain sections.
- (b) Application of section.

#### § 1.355-2 LIMITATIONS.

- (a) Property distributed.
- (b) Independent business purpose.
- (1) Independent business purpose requirement.
- (2) Corporate business purpose.
- (3) Business purpose for distribution.
- (4) Business purpose as evidence of non-device.
- (5) Examples.
- (c) Continuity of interest requirement.
- (1) Requirement.
- (2) Examples.
- (d) Device for distribution of earnings and profits.
- (1) In general.
- (2) Device factors.
- (i) In general.
- (ii) Pro rata distribution.
- (iii) Subsequent sale or exchange of stock.
- (A) In general.
- (B) Sale or exchange negotiated or agreed upon before the distribution.
- (C) Sale or exchange not negotiated or agreed upon before the distribution.
- (D) Negotiated or agreed upon before the distribution.
- (E) Exchange in pursuance of a plan of re-organization.
- (iv) Nature and use of assets.
- (A) In general.
- (B) Assets not used in a trade or business meeting the requirement of section 355(b).
- (C) Related function.
- (3) Nondevice factors.
- (i) In general.
- (ii) Corporate business purpose.
- (iii) Distributing corporation publicly traded and widely held.

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- (iv) Distribution to domestic corporate shareholders.

- (4) Examples.

- (5) Transactions ordinarily not considered as a device.

- (i) In general.

- (ii) Absence of earnings and profits.

- (iii) Section 303(a) transactions.

- (iv) Section 302(a) transactions.

- (v) Examples.

- (e) Stock and securities distributed.

- (1) In general.

- (2) Additional rules.

- (f) Principal amount of securities.

- (1) Securities received.

- (2) Only stock received.

- (g) [Reserved]

- (h) Active conduct of a trade or business.

- (i) [Reserved]

#### § 1.355-3 ACTIVE CONDUCT OF A TRADE OR BUSINESS.

- (a) General requirements.

- (1) Application of section 355.

- (2) Examples.

- (b) Active conduct of a trade or business defined.

- (1) In general.

- (2) Active conduct of a trade or business immediately after distribution.

- (i) In general.

- (ii) Trade or business.

- (iii) Active conduct.

- (iv) Limitations.

- (3) Active conduct for five-year period preceding distribution.

- (4) Special rules for acquisition of a trade or business (Prior to the Revenue Act of 1987 and Technical and Miscellaneous Revenue Act of 1988).

- (i) In general.

- (ii) Example.

- (iii) Gain or loss recognized in certain transactions.

- (iv) Affiliated group.

- (5) Special rules for acquisition of a trade or business (After the Revenue Act of 1987 and Technical and Miscellaneous Revenue Act of 1988).

- (c) Examples.

#### § 1.355-4 NON PRO RATA DISTRIBUTIONS, ETC.

#### § 1.355-5 Records to be kept and information to be filed.

- (a) Distributing corporation.

- (1) In general.

- (2) Special rule when an asset transfer precedes a stock distribution.

- (b) Significant distributee.

- (c) Definitions.

- (1) Significant distributee.

- (2) Publicly traded stock.

- (d) Substantiation information.

- (e) Effective/applicability date.

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(D) Options exercisable only upon death, disability, mental incompetency, or separation from service.

- [illegible]

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- (B) Examples.
- (4) Triangular asset reorganizations.
  - (i) Definition.
  - (ii) Treatment.
  - (iii) Example.
- (5) Reverse triangular reorganizations other than triangular asset reorganizations.
  - (i) In general.
  - (ii) Letter ruling and closing agreement.
  - (iii) Example.
- (6) Treatment of group structure changes.
  - (i) In general.
  - (ii) Adjustments to basis of higher-tier members.
  - (iii) Example.
- (7) Special rules for triangular asset reorganizations, other reverse triangular reorganizations, and group structure changes.
  - (e) Deemed purchase and timing rules.
    - (1) Attribution and aggregation.
      - (i) In general.
      - (ii) Purchase of additional interest.
      - (iii) Purchase between persons treated as one person.
    - (iv) Purchase by a person already treated as holding stock under section 355(d)(8)(A).
  - (v) Examples.
    - (2) Transferred basis rule.
    - (3) Exchanged basis rule.
      - (i) In general.
      - (ii) Example.
  - (4) Certain section 355 or section 305 distributions.
    - (i) Section 355.
    - (ii) Section 305.
  - (5) Substantial diminution of risk.
    - (i) In general.
    - (ii) Property to which suspension applies.
    - (iii) Risk of loss substantially diminished.
  - (iv) Special class of stock.
  - (f) Duty to determine stockholders.
    - (1) In general.
  - (2) Deemed knowledge of contents of securities filings.
  - (3) Presumptions as to securities filings.
  - (4) Presumption as to less-than-five-percent shareholders.
  - (5) Examples.
  - (g) Effective date.

### *§ 1.355-7 Recognition of gain on certain distributions of stock or securities in connection with an acquisition.*

- (a) In general.
- (b) Plan.
  - (1) In general.
- (2) Certain post-distribution acquisitions.
- (3) Plan factors.
- (4) Non-plan factors.
- (c) Operating rules.
  - (1) Internal discussions and discussions with outside advisors evidence of business purpose.
  - (2) Takeover defense.
  - (3) Effect of distribution on trading in stock.

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- (4) Consequences of section 355(e) disregarded for certain purposes.
- (5) Multiple acquisitions.
- (d) Safe harbors.
  - (1) Safe Harbor I.
  - (2) Safe Harbor II.
    - (i) In general.
    - (ii) Special rule.
  - (3) Safe Harbor III.
  - (4) Safe Harbor IV.
    - (i) In general.
    - (ii) Special rules.
  - (5) Safe Harbor V.
    - (i) In general.
    - (ii) Special rules.
  - (6) Safe Harbor VI.
  - (7) Safe Harbor VII.
    - (i) In general.
    - (ii) Special rules.
  - (8) Safe Harbor VIII.
    - (i) In general.
    - (ii) Special rule.
  - (9) Safe Harbor IX.
    - (i) In general.
    - (ii) Special rule.
- (e) Options, warrants, convertible obligations, and other similar interests.
  - (1) Treatment of options.
    - (i) General rule.
    - (ii) Agreement, understanding, or arrangement to write, transfer, or modify an option.
    - (iii) Substantial negotiations related to options.
      - (2) Stock acquired pursuant to options.
      - (3) Instruments treated as options.
      - (4) Instruments generally not treated as options.
        - (i) Escrow, pledge, or other security agreements.
        - (ii) Options exercisable only upon death, disability, mental incompetency, or separation from service.
        - (iii) Rights of first refusal.
    - (iv) Other enumerated instruments.
  - (f) Multiple controlled corporations.
  - (g) Valuation.
  - (h) Definitions.
    - (1) Agreement, understanding, arrangement, or substantial negotiations.
    - (2) Controlled corporation.
    - (3) Controlling shareholder.
    - (4) Coordinating group.
    - (5) Disclosure event.
    - (6) Discussions.
    - (7) Established market.
    - (8) Five-percent shareholder.
    - (9) Implicit permission.
    - (10) Public announcement.
    - (11) Public offering.
    - (12) Similar acquisition (not involving a public offering).
    - (13) Similar acquisition involving a public offering.
      - (i) One public offering.
      - (ii) More than one public offering.
      - (iii) Potential acquisition involving a public offering.

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- (14) Ten-percent shareholder.
- (i) [Reserved]
- (j) Examples.
- (k) Effective dates.

[T.D. 8238, 54 FR 289, Jan. 5, 1989, as amended by T.D. 8913, 65 FR 79722, Dec. 20, 2000; T.D. 8960, 66 FR 40591, Aug. 3, 2001; T.D. 8988, 67 FR 20636, Apr. 26, 2002; 67 FR 38200, June 3, 2002; T.D. 9198, 70 FR 20283, Apr. 19, 2005; T.D. 9264, 71 FR 30597, May 30, 2006; T.D. 9329, 72 FR 32799, June 14, 2007; T.D. 9435, 73 FR 75950, Dec. 15, 2008]

### § 1.355-0T Outline of sections (temporary).

This section lists the major paragraphs under § 1.355-2T.

#### *§ 1.355-2T Limitations (temporary).*

- (a) through (f)(2) [Reserved] For further guidance, see the entries for § 1.355-2(a) through (f)(2) in § 1.355-0.
- (g) Recently acquired controlled stock under section 355(a)(3)(B).
  - (1) Other property.
  - (2) Exceptions.
  - (3) DSAG.
  - (4) Taxable transaction.
  - (5) Examples.
- (h) [Reserved] For further guidance, see the entry for § 1.355-2(h) in § 1.355-0.
  - (1) Effective/applicability date.
    - (i) In general.
    - (2) Transition election.
    - (3) Retroactive election.
    - (4) Manner of election.
    - (5) Prior law.
    - (6) Expiration date.

[T.D. 9435, 73 FR 75950, Dec. 15, 2008]

### § 1.355-1 Distribution of stock and securities of a controlled corporation.

(a) *Effective/applicability date of certain sections.* Except as otherwise provided, this section and §§ 1.355-2 through 1.355-4 apply to transactions occurring after February 6, 1989. For transactions occurring on or before that date, see 26 CFR 1.355-1 through 1.355-4 (revised as of April 1, 1987). This section and §§ 1.355-2 through 1.355-4, other than §§ 1.355-2(g) and (i) and 1.355-2T, do not reflect the amendments to section 355 made by the Revenue Act of 1987, the Technical and Miscellaneous Revenue Act of 1988, and the Tax Technical Corrections Act of 2007. For the applicability date of §§ 1.355-2T(g), 1.355-5, 1.355-6, and 1.355-7, see §§ 1.355-2T(i), 1.355-5(e), 1.355-6(g), and 1.355-7(k), respectively.

(b) *Application of section.* Section 355 provides for the separation, without recognition of gain or loss to (or the inclusion in income of) the shareholders and security holders, of one or more existing businesses formerly operated, directly or indirectly, by a single corporation (the “distributing corporation”). It applies only to the separation of existing businesses that have been in active operation for at least five years (or a business that has been in active operation for at least five years into separate businesses), and which, in general, have been owned, directly or indirectly, for at least five years by the distributing corporation. A separation is achieved through the distribution by the distributing corporation of stock, or stock and securities, of one or more subsidiaries (the “controlled corporations”) to its shareholders with respect to its stock or to its security holders in exchange for its securities. The controlled corporations may be pre-existing or newly created subsidiaries. Throughout the regulations under section 355, the term *distribution* refers to a distribution by the distributing corporation of stock, or stock and securities, of one or more controlled corporations, unless the context indicates otherwise. Section 355 contemplates the continued operation of the business or businesses existing prior to the separation. See § 1.355-4 for types of distributions that may qualify under section 355, including pro rata distributions and non pro rata distributions.

(c) *Stock rights.* Except as provided in § 1.356-6, for purposes of section 355, the term *securities* includes rights issued by the distributing corporation or the controlled corporation to acquire the stock of that corporation. For purposes of this section and section 356(d)(2)(B), a right to acquire stock has no principal amount. For this purpose, rights to acquire stock has the same meaning as it does under sections 305 and 317(a). Other Internal Revenue Code provisions governing the treatment of rights to acquire stock may also apply to certain distributions occurring in connection with a transaction described in section 355. See, for example, sections 83 and 421 through 424 and the regulations thereunder. This paragraph (c)